No. 12511

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, *et al.*,

Appellants,

vs.

MALLONEE, *et al.*, SHAREHOLDERS PROTECTIVE COMMITTEE OF LONG BEACH ASSOCIATION, LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FAHEY *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*

Appellees.

BRIEF OF APPELLEE, GEORGE TURNER.

F. Henry Necasek,
3233 East Anaheim Street, Long Beach 4, California,
Attorney for Appellee George Turner.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

No. 12511

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, *et al.*,

Appellants,

vs.

MALLONEE, *et al.*, SHAREHOLDERS PROTECTIVE COMMITTEE OF LONG BEACH ASSOCIATION, LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, FAHEY *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*

Appellees.

BRIEF OF APPELLEE, GEORGE TURNER.

JURISDICTIONAL AND PRELIMINARY STATEMENT.

Appellee, George Turner, for the purpose of brevity, joins in and adopts portions of the brief of appellee, Long Beach Federal Savings and Loan Association, as to:

> Description of litigation; Jurisdictional Statement; Statement of the Case; Scope of Review on Appeal from Preliminary Injunction; Immunity from Suit; Indispensable Parties; Conclusiveness of Findings; and Propriety of Preliminary Injunction.

Additional treatment of the jurisdiction of the Court in this case as well as questions presented in appellants' brief, will be found in the argument hereinafter set forth.

FURTHER STATEMENT OF THE CASE:

For the convenience of the Court, this statement will be set forth in two parts:

(1) Proceedings prior to the motion for the Injunction on appeal, and

(2) Proceedings on the motion for injunction.

PROCEEDINGS PRIOR TO MOTION.

Prior to the 8th day of May, 1946, the appellee Long Beach Federal Savings and Loan Association had been using a portion of its building at 332 American Avenue, Long Beach, California, consisting of a lobby and the second and third floors of its three-story building, together with a parking lot in the rear of the building, for the purpose of conducting a hotel as part of its activities. In order to divorce itself of this foreign business adventure, the directors on the 8th day of May, 1946, by resolution authorized its officers to enter into a lease with appellee George Turner, whereby it leased to him the lobby of the Hotel Rolston and the second and third floors of the building, together with the parking lot in the rear of the building, for a term of twenty years, commencing on the 8th day of May, 1946, at a rental basis of fifty per cent of the net proceeds from said property after the payment of expenses, costs and charges. Said lease entitled the lessee to the use of the hotel equipment, furniture and fixtures as were then in said hotel and provided that any replacement made by the lessee should become the lessee's property. The lease further provided that the "lessor" (intended to be lessee) could at his option convert any part of the building to business purposes or business rentals and make such alteration and repair as may from

time to time be necessary or convenient to use said building for such purposes as lessee may from time to time determine. Said lease further provided that lessee should pay the taxes on all personal property owned by the lessee and used for the operation of said leased premises and should further pay the personal property taxes on property owned by the lessor and used by the lessee under said lease. Said lease is fully set forth at R. 3489-3491. Pursuant to said lease, the said George Turner went into possession of said premises and has continued in said possession ever since said date. That on May 20, 1946, appellant Ammann seized possession of appellee Long Beach Federal Savings and Loan Association, claiming to be appointed as conservator thereof by appellant John H. Fahey (on January 23, 1948, he was removed as such conservator by Order of the Court below, which order has become final from lack of appeal therefrom). That on July 12, 1946, subsequent to his taking possession of Long Beach Federal Savings and Loan Association, appellant A. V. Ammann, claiming to act as conservator, notified Appellee George Turner, by registered mail, to the effect that the lease dated May 8, 1946, between the Long Beach Federal Savings and Loan Association, as lessor, and Turner, as lessee, and covering the property hereinabove described, was not recognized by the appellant Ammann as conservator of the Long Beach Federal Savings and Loan Association, as a valid lease and accordingly Turner was directed to surrender said property immediately and to make an accounting for all income of any kind whatever received by him in connection with the operation of said property. Said letter was signed "Long Beach Federal Savings and Loan Association by A. V. Ammann, Conservator." A photostatic copy of

said letter is shown in Appendix "A," *infra*. Appellee Turner reported the receipt of the cancellation of his lease to the officers of the Long Beach Federal Savings and Loan Association and was advised by said officers that A. V. Ammann as Conservator, had no authority to make any demand of any kind or nature for and on behalf of said Association and he was warned that any payments made to Ammann, or any action taken by him, would not be recognized by the Long Beach Federal Savings and Loan Association and that the same would be made or taken at Turner's own peril. Thereafter by reason of the demands by conservator Ammann, on the one hand, insisting that the lease was cancelled and that payments thereunder be made to him, and the representations of the Long Beach Federal Savings and Loan Association, on the other hand, insisting that the lease was valid and demanding that no payments be made to Ammann, appellee Turner refrained and desisted from the making of any payments provided to be made under the provision of the lease and impounded all money due the Long Beach Federal Savings and Loan Association in a trustee bank account in his own name. Conservator Ammann, for approximately a period of twenty months thereafter, brought no action for the adjudication of the dispute, either looking toward the cancellation of the lease or for the collection of the moneys due thereunder, or over the dispute between the Long Beach Federal Savings and Loan Association and Ammann, notwithstanding the fact that Ammann was authorized to "institute, prosecute, maintain, defend, intervene and otherwise participate in any and all actions, suits or other legal proceedings by and against the conservator or association." (Code of Federal Regulations, Title 24, Part 149, section 149.5(f)).

That on the 16th day of January, 1948, just one day prior to the adoption on January 17, 1948, of appellants Home Loan Bank Board Resolution No. 388 [R. 8231-8232, Footnote 7], which by its terms repealed Federal Home Loan Bank Administration Order No. 5254 under which Ammann was appointed as conservator for the defendant Long Beach Federal Savings and Loan Association, an action was filed in the Superior Court of the State of California, in and for the County of Los Angeles, known as Case No. LBC-14492 [R. 9585-9645] wherein Harold Lee Newendorp and Charles E. Bradley, claiming to represent all of the depositors in appellee Long Beach Federal Savings and Loan Association, were plaintiffs and T. A. Gregory and others, including appellee George Turner, were defendants. In said State Court action the plaintiffs, Newendorp and Bradley, among other things, set forth that no part of the rental under the aforesaid lease had been paid to the Long Beach Federal Savings and Loan Association and that said Association was entitled to said rentals then due and unpaid. Said complaint on behalf of Newendorp and Bradley also asked for cancellation of the lease as fraudulent and for damages in a specified amount [R. 9585-9645].

Pursuant to the adoption of Home Loan Bank Board Resolution No. 388 on January 17, 1948, petition was filed with the Federal Court by plaintiffs the Shareholder Members Protective Committee of the Long Beach Federal Savings and Loan Association for an order restoring the possession and control of said Association to its duly elected Board of Directors. Pursuant thereto on January 23, 1948, the Court made its order for the restoration of the control of the property, assets and management

of said Association to its said officers and directors to be effective as of noon January 24, 1948.

It appears that the action filed on behalf of Newendorp and Bradley on January 16, 1948, which contained, among other things, the same specific charges made by conservator Ammann in his earlier letter of demand, dated July 12, 1946, hereinabove referred to, was the complaint of Ammann, or at least a parting shot by conservator Ammann by reason of the fact that at some time between January 17, 1948, and January 24, 1948, said conservator Ammann fled the jurisdiction of the California Federal Court and has not been within the jurisdiction of said Court since said date. It also appears that the same identical charges made in said complaint [R. 9585-9645] against the appellee Turner, are contained in the More Definite Statement shown in R. 8218-8224, Footnote 4.

Subsequent to the filing of the Newendorp-Bradley action, an application for a receiver for the hotel property was made to the Superior Court. Appellee Turner was shortly thereafter served with summons and complaint on behalf of the Plaintiffs, Shareholder Members Protective Committee and notified not to acquiesce in the cancellation of the lease. Appellee Turner joined in the motion of appellee Title Service Company, a corporation, for the removal of the Superior Court action to the District Court by reason of the many conflicting jurisdictional matters and in order to avoid a multiplicity of suits.

On the 29th day of January, 1948, appellee Turner filed his answer and cross-claim in interpleader in Action No. 5421 PH, including Consolidated Case No. 5678 WM [R. 3461-3491] and interplead in the District Court the

sum of $11,515.87 as rental accrued under said lease to and including January 1, 1948 [R. 3467-3468]. Subsequently, two supplemental cross-claims in interpleader were filed on behalf of appellee Turner in which the additional sums of $1,380.84 and $5,606.81 were deposited in the Registry of this Court [R. 3872-3876 and R. 8138-8141].

On the 16th day of April, 1948, appellee Turner filed in the District Court his answer and cross-claim to the action of Newendorp and Bradley which still remains on file unanswered [R. 9963-9998]. The answer and cross-claim in interpleader of appellee Turner, in addition to setting forth the amount of rent accumulated and the tender of said amount into Court, asks for the adjudication of the validity of his lease and requests that further proceedings in the Newendorp-Bradley action in the Superior Court of the State of California, in and for the Court of Los Angeles, be stayed until the termination of the litigation in the District Court.

The lease of the hotel property executed by the Long Beach Federal Savings and Loan Association in favor of appellee Turner is made a part of the appellants' More Definite Statement of May 29, 1946 [R. 8218-8224, Footnote 4], wherein it is charged that the officers of the Association executed a purported lease of the hotel property to one George Turner for a twenty year period on terms which, in effect, would give to the said Turner the use of said property without adequate consideration therefor to the said Association. It also appears that under Home Loan Bank Order No. 2015 dated September 9, 1949, the same complaint is incorporated by reference in Paragraph 4 thereof [R. 8242-8247, Footnote 11]. Paragraph 4 states, in effect, that the Association

and its officers have committed and are committing other violations of law and regulations, including violations set out in the More Definite Statement submitted to said Association on May 29, 1946, and have pursued and are pursuing a course that is jeopardizing and injurious to the interests of its members, creditors and the public. It therefore appears that the validity of appellee Turner's lease is still a matter of dispute and is used as a basis of Home Loan Bank Order No. 2015.

The validity of appellee Turner's lease is still pending before the District Court and is involved as part of the conservator Ammann's accounting. The District Court, by reason of its Preliminary Injunction and Order of Remand, on the 2nd day of February, 1949 [R. 8377-8398], stayed all proceedings concerning the validity of the lease or the rent deposited except by proceedings before said District Court.

While it is true that appellee Turner is not named as a party in Home Loan Bank Board Order No. 2015, it appears that the question of the validity of his said lease would be raised, particularly in view of the fact that the order provides "that any person, partnership, association, or corporation claiming to have an interest in the subject matter involved may, at any time before the closing of the hearing, file with the Presiding Officers a petition for leave to intervene at said hearing" [R. 8245, Footnote 11].

It would therefore appear that appellee Turner would necessarily, in order to protect his said lease from the

claims of the Home Loan Bank Board at the Administrative Hearing, be compelled to travel some 3,000 miles and, without the assistance of the Court or his counsel, take his chances on an adjudication by an Administrative Board as to the validity of his lease and be placed in jeopardy as to rents and profits heretofore interpleaded in the District Court. Appellee Turner is unwilling to have the validity of his lease adjudicated in his absence, particularly by a party litigant, namely, the Home Loan Bank Board who through its representative, A. V. Ammann, heretofore attempted to cancel it.

PROCEEDINGS ON MOTION FOR INJUNCTION.

On October 17, 1949, appellee George Turner filed his motion for issuance of a temporary restraining order to restrain the Administrative Hearing before the Home Loan Bank Board pursuant to said Order 2015 of said Board, dated September 9, 1949, together with proper affidavits and points and authorities [R. 7676]. The motion set forth that George Turner was the person named in the More Definite Statement of the Home Loan Bank Board under date of May 29, 1946, and which said More Definite Statement was again referred to in the Home Loan Bank Order No. 2015 of September 9, 1949. Said motion asked that the District Court issue a temporary restraining order enjoining and restraining each and every party to this action individually and in their official capacity from further proceeding

with the Administrative Hearing, set for October 25, 1949, in Washington, D. C.

The motion set forth that appellee Turner had deposited in the Registry of the District Court the sum of $12,896.71, being the rentals due to and including February 28, 1948, under his lease with the Long Beach Federal Savings and Loan Association, and that the rentals and validity of the lease were made a part of said More Definite Statement of May 29, 1946, and referred to in Paragraph 4 of appellant Home Loan Bank Board Order No. 2015 of September 9, 1949.

The motion further set forth that parties to the action were prohibited, enjoined and restrained by order of the Court dated February 2, 1949 [R. 8377-8398], from proceeding with said litigation or any part thereof in any proceeding other than in the Federal District Court. The Motion pointed out that the intervention and appearance of appellee Turner before said Administrative Hearing proposed to be conducted by the Home Loan Bank Board pursuant to said Order No. 2015 of September 9, 1949, would be in direct violation, disregard and in contempt of said District Court's order of February 2, 1949. Said motion further set forth that, unless restrained, the Home Loan Bank Board would proceed with the Administrative Hearing, evidence would be taken against him in his absence and findings would be made therein which would be prejudicial and detrimental to him. The motion further recited that appellee Turner was

made a party defendant to this litigation through no choice of his own and that he subsequently and in good faith filed his cross-claim in interpleader, submitting himself to the jurisdiction of the District Court in order that all matters and controversies between the various parties, and particularly the matters set forth in the More Definite Statement heretofore referred to, could be tried on their merits before a Court having jurisdiction of the parties and the subject matter. Further attention is called to the fact that to allow the hearing would result in a multiplicity of actions and hearings, all of which would be contrary to, and in violation of, the interpleader jurisdiction of the District Court and its orders heretofore made herein and thereon and would result in great and irreparable damage to appellee Turner for said hearing to attempt to adjudicate his rights in and to said lease and appoint a receiver over the subject matter of the litigation in his absence.

After a hearing in Court, the Court rendered an oral opinion which appears at R. 11146-11164 and granted the Preliminary Injunction at R. 8194-8540.

ARGUMENT.

Appellant contends that the cross-claim of Turner is "even more specious", having been filed on January 29, 1948 and after the termination of the conservator's appointment and therefore the rental payment could have been safely paid to the Association, without any risk of double liability, since no dispute then existed as to who was entitled to represent the Association. Taking this statement on its face, it would appear that appellant's position was sound. However, on January 16, 1948, and prior to the order of January 23, 1948, restoring the possession and control of Association to its officers and directors, appellee Turner was made a party defendant in a civil action in the Superior Court of the State of California, in and for the County of Los Angeles, known as Case LBC-14492 [R. 9585-9645], brought by Harold Lee Newendorp and Charles E. Bradley, claiming to represent the class of all depositors in appellee Long Beach Federal Savings and Loan Association. In said action, the question of rentals and validity of the lease was again questioned and said complaint demanded damages and the appointment of a receiver for the leased hotel premises.

Immediately following the filing of the Newendorp action, appellee Turner was made a party defendant in the original shareholders class action, filed in the District Court in 1946, two years before. Appellee Turner filed in the U. S. Court, his answer and cross-claim in interpleader, depositing the sum of $11,515.87 and subsequently filed a first and second supplemental cross-claim in interpleader, depositing additional sums [R. 3872; 8138].

Appellee Turner also joined in the motion of appellee Title Service Company for removal of the State Superior Court Action to the District Court and was one of the movants in obtaining a restraining order against further proceedings in the Superior Court [R. 8377-8398].

The factual information contained in the Superior Court Action of Newendorp and Bradley was peculiarly within the knowledge of conservator Ammann and was contained for the most part in that certain "secret" document known as Exhibit "C" for identification, designated as Docket No. 2905, Reports and Audits of the Long Beach Federal Savings and Loan Association [R. 8265], which was first made available to the movants for the preliminary injunction at 10:30 o'clock P. M. on November 7, 1949, the date of the hearing of the subject preliminary injunction. How this so-called factual information was apparently made available to Newendorp and Bradley for a foundation in bringing the Superior Court Action on the eve of Ammann's fleeing the jurisdiction of the U. S. District Court is another of the unexplained mysteries of this involved litigation. The answer rests with former conservator Ammann.

QUESTION: WHOSE ACTION IS "EVEN MORE SPECIOUS"?

Appellants made no response to appellee, Turner's motion for Issuance of Preliminary Injunction [R. 7686] which, among other facts, set forth the following:

"III

"That unless permanently enjoined, the defendants Home Loan Bank Board and the individual members thereof, will proceed with the administrative hearing of October 25, 1949, which said proceedings would be an attempt to invade and usurp the juris-

diction of this Court, contrary to the orders thereof, and in violation of those certain orders of this Court prohibiting all parties thereto and each of them from litigating, appearing in, or participating in, any proceedings in any forum other than this United States District Court."

By their failure to deny the facts set forth in said Motion, particularly the facts hereinabove quoted, appellants admit that the proposed administrative hearing would invade and usurp the jurisdiction of said District Court.

INTERPLEADER JURISDICTION.

The jurisdiction and right of appellee Turner to interplead in order to avoid double liability and multiplicity of actions is set forth in the following decisions:

Treinies v. Sunshine Mining Co., 308 U. S. 66, 84 L. Ed. 85 (1940)

affirming Ninth Circuit. In this case the Supreme Court held:

"By the act of January 20, 1936 (Old Title 28, U. S. C. Sec. 41 sub. 26), the District Courts have jurisdiction of suits in equity, interpleading two or more adverse claimants, instituted by complainants who have property of the requisite value claimed by citizens of different states. The suit may be maintained 'although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another' . . ." (Citation to Title 28 U. S. C. added.)

The Court further held:

"Process may run at least throughout all the states. Neither are the provisions of Sec. 265 of the Judi-

cial Code 28 U. S. C. A. 379 applicable. That section forbids a United States court from staying proceedings in any state court. The Interpleader Act passed subsequently, however, authorizes the enjoining of parties to the interpleader from further prosecuting any suit in any state or United States court on account of the property involved. Such authority is essential to the protection of the interpleader jurisdiction and is a valid exercise of the judicial power." (Emphasis added.)

In refusing to permit re-litigation of jurisdiction when the judgments of the state court had become final, the Supreme Court said:

"One trial of an issue is enough. 'The principles of res judicata apply to questions of jurisdiction as well as to other issues', as well to jurisdiction of the subject matter as of the parties. (Citing authorities.)" (Emphasis added.)

The broad powers of a Court of equity to protect its interpleader jurisdiction, particularly to preserve the integrity of its final judgments from violation by a defeated litigant, are shown in the case of:

Dugas v. American Surety Co., 300 U. S. 414; 81 L. Ed. 720 (1937).

In the above case the Court found that a new State Court action against the different defendants, was in contravention of the spirit, if not the letter, of the decree in the interpleader suit. The Court in affirming the injunction, quoted the interpleader statute, on which it based its decision:

"Section 2. . . . Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such

> claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any Federal Court . . . until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed and served by United States marshals for the respective districts wherein said claimants reside or may be found."

Railway Express v. Jones, 106 F. 2d 341; (C. C. A.-7 1939).

The above case held that where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to interpleader relief under the section is absolute.

The Courts have even held that diversity of citizenship is not a requirement for an interpleader action. The Courts have held that the reason for interpleader is not negatived by the fact that the claimants to the fund are of the same state. The usefulness of the proceedings is in the protection of the party against conflicting claims, and jurisdiction is laid by the allegation or complaint. A controversy of this nature is settled by the sensible process of bringing all parties into one Court proceeding.

Roscttti v. Hill, 162 F. 2d 892 (C. C. A.-9, 1947);

Security Bank v. Walsh, 91 F. 2d 481 (C. C. A.-9 1937).

The latter was a case wherein plaintiff, a British corporation, sued conflicting claimants who are all citizens of California. Objection was made to the jurisdiction and the Court of Appeals for the Ninth Circuit held that

jurisdiction existed notwithstanding the lack of diversity of citizenship. The statutes on interpleader were intended to afford a remedy in situations where interpleader had theretofore been unavailable because of the impossibility of bringing before a Court, claimants residing beyond its territorial jurisdiction.

> *Cramer v. Phoenix, etc.,* 91 F. 2d 141 (C. C. A.-8 1937).

In affirming interpleader jurisdiction the Circuit Court held:

> "It is elementary that where one court takes jurisdiction of a specific thing, the *res* is as much withdrawn from the judicial power of another as if it had been removed to a different territorial sovereignty. The tribunal whose jurisdiction first attaches, holds it to the exclusion of the other until its duty is fully performed and the jurisdiction involved is exhausted . . . It appears that the proceeds of the two policies were deposited in the registry of the lower court. In these circumstances that court had exclusive jurisdiction and power to hear and determine all questions respecting title, possession, and control of them . . ."
>
> *Maryland Casualty Co. v. Glassell-Taylor,* 156 F. 2d 519 (C. C. A.-5 1946).

In this case the Court held that the Federal Rules of Civil Procedure were not designed merely to prevent a multiplicity of suits and protect the stakeholder from multiple liability but they were also intended to require all interested parties to come in and set up their claims in one case. The interpleader statute was also designed to afford a means of process by which claimants who live in other states, may be called in and required to litigate in one Court to the end that all claimants to the

fund, as well as the holder of the fund, may be given protection.

United States v. Sentinel Ins., 178 F. 2d 217 (C. C. A.-5 1949).

In the above case, seven insurance companies commenced interpleader against the Collector of Internal Revenue, federal receivers and various other claimants. Appellants maintain that because some of the claimants were of the same citizenship as others, the interpleader jurisdiction was thereby defeated. However, the Court held that even if the plaintiffs in the interpleader suit had been dismissed before final decree, the requirements of the statute would be met if there were two or more claimants who were citizens of different states, regardless of how many claimants there might be who were citizens of the same state with other claimants. This case cites the case of *Dugas v. American Surety Co., supra.*

JURISDICTION GENERALLY.

The District Court not only accepted but had jurisdiction from the inception of the litigation and still retains such jurisdiction.

The combined and consolidated actions before the Court affect assets located in California in excess of $100,000,000.00. There has been interpleaded into the Registry of the District Court, approximately $14,000,000.00 in various assets and there are conflicting claims filed thereto, as well as disputes and questions affecting the title to real and personal property, including the leasehold interests of appellee Turner, all of which assets are within the jurisdiction of said District Court, which clearly establishes the interpleader jurisdiction (Rule 22 F. R. C. P;

28 U. S. C. Sections 1335, 1397 and 2361—formerly 41(26) of Title 28 U. S. Code).

There is a diversity of citizenship between the various parties to the action. There are interpretations of federal laws, rules and regulations, and numerous constitutional questions involved, as well as titles to real and personal property in the pending litigation, which cannot be determined other than by Court procedures, certainly not by an administrative hearing where the board is complainant, prosecutor, judge and jury.

In rem jurisdiction has been established in said District Court pursuant to Section 1655 (formerly section 118) Title 28 U. S. Code.

The District Court has repeatedly held that it has jurisdiction of the parties by reason of various orders [R. 5275], including Exhibits "A", "D", "E", "F" and "H" [commencing at R. 8310 and ending at R. 8398], some of which were appealed from and later dismissed, and others on which the appeal time has long since expired [R. 8268]. The District Court, having thus obtained jurisdiction in equity and in interpleader, had the right to protect the integrity of its previous findings and judgments and decrees.

Appellee particularly calls attention to Exhibit "E", *supra* [Preliminary Injunction Enjoining Prosecution of Remanded Action and Order of Remand, R. 8377], and hereinafter quotes certain provisions of the Order as found on [R. 8398]:

> "It Is Further Ordered that all parties to said remanded action be and they hereby are enjoined and restrained from prosecuting in any other proceeding in or connected with said remanded action

numbered L. B. C.-14492 in the Superior Court of the State of California, in and for the County of Los Angeles until the final judgment in the litigation pending in this entitled court, in Case No. 5421-P. H. and its consolidated Case No. 5678-P. H., or until further order of this above-entitled Court.

"During the period this Injunction and Restraining Order shall remain in effect, none of the parties affected thereby are restrained or enjoined from taking any or all actions or proceedings which they or any of them may deem appropriate in the above-entitled proceedings and before this Court but not otherwise."

As heretofore pointed out, no appeal was taken from said Preliminary Injunction and Order of Remand, and the same is final. From the foregoing Order it appears that appellee George Turner was enjoined and restrained from prosecuting in any other forum except the said District Court.

Looney v. East Texas Rwy. Co., 247 U. S. 216; 62 L. Ed. 1084 (1918);

Julian v. Central Trust Co., 193 U. S. 93; 48 L. Ed. 629 (1904).

A similar case in point is the *City of Orangeburg v. Southern Railway Co.,* 134 F. 2d 890 (C. C. A.-4, 1943).

This case held in affirming the injunction to prevent seizure of possession of property the subject of litigation in Federal Court, said at page 892:

". . . under the established rule set out in Kline v. Burke Const. Co., 260 U. S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077, and many other decisions, the court, state or federal, which first acquires jurisdiction of the subject matter of a suit in rem holds it to the exclusion of any other

court until its duty is fully performed, and to that end may enjoin the parties from proceeding in any other court when the effect of the action therein would be to defeat or to impair its own jurisdiction . . . ."

ANSWER TO LACK OF JURISDICTION OVER INDISPENSABLE PARTIES.

Appellants contend that by reason of the fact that they are government agencies or members thereof, that their actions are beyond the review of any Court and that they are immune from suit. It is conceded that the Federal Home Loan Bank of San Francisco and Federal Savings and Loan Insurance Corporation are both "sue or be sued" corporations. Likewise, Code of Federal Regulations, Title 24, Part 149, Section 149.5 "Powers and Duties of Conservator", Subsection (f) provides that a conservator may sue and be sued.

The doctrine of immunity is not favored by Congress or the Courts. *Land v. Dollar,* 330 U. S. 731; 91 L. Ed. 1209 (1947); *Keifer v. Reconstruction Finance Corp.,* 306 U. S. 381; 83 L. Ed. 784 (1939); *Federal Housing Administration v. Burr,* 309 U. S. 242, 84 L. Ed. 724 (1940); *Reconstruction Finance Corp. v. Menihan,* 312 U. S. 81; 85 L. Ed. 595 (1941).

It is contended by appellee Turner that any immunity, if it ever did exist, was waived and abandoned by the general appearance of appellants Home Loan Bank Board and its members upon the filing in the District Court of its Order No. 388 [R. 3404] which removed the conservator under Court Order.

The attitude of Congress towards the agencies' immunity from suit is expressed by Subdivision (c) of

Section 10 of the Administrative Procedure Act (Title 5, U. S. C. Sec. 1009), which provides that every agency action made reviewable by statute, and every final agency action from which there is no other adequate remedy in any Court shall be subject to judicial review. It would therefore appear that if there is no other adequate remedy for judicial review, the Administrative Procedure Act creates one.

In the case of *Reconstruction Finance Corp. v. Menihan*, 312 U. S. 81, 85 L. Ed. 595, the Court held:

> ". . . starting from the premise indicated in the Keifer case (supra) that waivers by Congress of governmental immunity from suit should be liberally construed in the case of federal instrumentalities—that being in line with the current disfavor of the doctrine of governmental immunity—we concluded that in the absence of a contrary showing 'it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to "sue and be sued" that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.' "

Conclusion.

For foregoing reasons, the appeal should be dismissed.

Respectfully submitted,

F. Henry Necasek,

Attorney for Appellee George Turner.

LONG BEACH
FEDERAL SAVINGS
AND LOAN ASSOCIATION

328 AMERICAN AVENUE . TELEPHONE 712-03
LONG BEACH 2, CALIFORNIA

July 12, 1946

Mr. George Turner,
340 East Fourth Street,
Long Beach 2, California.

Dear Sir:

This is to notify you that the purported lease dated May 8, 1946, between Long Beach Federal Savings and Loan Association, as lessor, and you as lessee, and covering property known as

> The lobby of the Hotel Rolston located at 332 American Avenue, Long Beach, California, and the second and third floors of the three story building occupying the property described as Lots 14 and 16, Block 78, Long Beach Townsite, together with the parking lot in the space upon said lots not occupied by the new existing building,

is not recognized by the Long Beach Federal Savings and Loan Association as a valid lease. Accordingly you are hereby directed to surrender said property immediately and to make an accounting for all income of any kind whatever received by you in connection with the operation of such property.

Very truly yours,

LONG BEACH FEDERAL SAVINGS
AND LOAN ASSOCIATION

By A. V. Ammann

A. V. Ammann
Conservator

Registered Mail
Return Receipt Requested